

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting
)

(Chapter VIII, Rule 32(2) (b))

Description of the Case

C482 No. 1026 / 06
Pankaj Jain & others
Vs.
State of Uttaranchal & others

Approved for reporting

Not approved for reporting

Date of decision 16.12.2006

Initials of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 1026 OF 2006

1. Pankaj Jain,
S/o Shri Nem Chandra Jain,
R/o 15 Adarsh Colony, Ram Nagar Roorkee,
Police Station- Kotwali, Gangnagar,
Roorkee, District- Haridwar.
 2. Navin Kumar Jain,
S/o Shri Salek Chandr Jain,
R/o 348 /9, West Amber Talap Roorkee,
Police Station- Kotwali, Gangnagar,
Roorkee, District- Haridwar.
- Applicants.

Vs.

1. State of Uttaranchal.
 2. Judicial Magistrate, Roorkee, District- Haridwar.
 3. District & Sessions Judge, Haridwar.
 4. Arvind Kumar , S/o Shri Kalu Ram,
R/o Shastri Nagar, Gali No. 8,
Police Station- Kotwali- Gangnagar,
Roorkee, District- Haridwar.
- ..Opposite Parties/ Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri S.C. Tyagi, counsel for the applicant
and A.G.A. for the State.

2. By the present application filed under Section 482 of the Code of Criminal Procedure, applicant has prayed for quashing the order dated 8th December, 2006

passed by the Judicial Magistrate, Roorkee in Criminal Case No. 521 of 2006 Arvind Kumar Vs. Pankaj Jain and another under Section 156 (3) of Code of Criminal Procedure, Police Station- Kotwali- Gangnagar, Roorkee District Haridwar.

3. Initially the application under Section 156 (3) of the Code of Criminal Procedure was filed before the Police Station Gangnagar, Roorkee for investigation.

4. A perusal of the complaint filed under Section 156(3) of the Code of Criminal Procedure reveals that Arvind Kumar- the complainant has stated that he was under an impression that a sum of Rs. 25,000/- is being taken as a loan from the applicants. Later on, it has come to his notice that a registered agreement to sell has been executed for which a sum of Rs. 25,000/- has been shown to have given as advance by the applicants. The applicants have also annexed the copy of the agreement to sell, which has been executed between Arvind Kumar Chauhan- respondent no. 4 as well as the applicants. It shows that the whole transaction was for a sum of Rs. 80,000/- for which an advance has been given to the extent of Rs. 25,000/-. It is a registered agreement signed by all the parties.

5. The submission of the counsel for the applicant- Sri S.C. Tyagi is to the effect that while passing the order on 8th December, 2006 directing the Police for investigation the Magistrate concerned has not applied his mind inasmuch as the registered agreement has been completely ignored.

6. A perusal of the order shows that the Magistrate concerned has taken into consideration the averments made in the complaint alone.

7. Counsel for the applicants has referred the judgment of ***Sri Surendra Nath Swain Vs. State of Orissa & Ors. 2005 (4) Criminal Court Cases 796 (Orissa)***, where it has observed as under:

“Furthermore, a Magistrate can refer a complaint to Police for registration of the same as an FIR only when the complaint discloses prima facie case of commission of cognizable offence. Equally, Police has no power to register a complaint as an FIR unless the complaint discloses a prima facie case of commission of a cognizable offence.

7. Therefore, on perusal of the complaint lodged by the petitioner – complainant, we do not find any prima facie case of commission of any cognizable offence. In the absence of prima facie case of commission of any cognizable offence. Police has no power to register a complaint as an FIR. Equally, this Court cannot direct the Police to register such complaint as an FIR.”

8. Counsel for the applicants has further referred ***P.R. Venugopal Vs. SM. Krishna 2004(1) Criminal Court Cases 634 (Karnataka)***, where it has been observed that the order passed on the complaint under Section 156(3) of the Code of Criminal Procedure

before taking cognizance or referring the matter for investigation to the Police has to satisfy the averments regarding allegation in the complaint.

9. Counsel for the applicants has submitted that since the Judicial Magistrate has directed for police investigation under Section 156(3), therefore, during the investigation, it is not necessary to take into account the entire material giving rise to the application under Section 156(3) of the Code of Criminal Procedure and a registered agreement between the parties etc. Section 156 of the Code of Criminal Procedure reads as under:

“156. Police officer’s power to investigate

cognizable case.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any state be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.”

10. As will appear from Sub-clause(3) Section 156 of the Code of Criminal Procedure, any Magistrate empowered, may take the cognizance. Section 190 of the

Code of Criminal Procedure further refers three modes of taking the cognizance. It reads as under:

“190. Cognizance of offences by Magistrates . – (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

- (a) upon receiving a complaint of facts which constitute such offence,
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
- (d) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try.”

11. Sub-clause (b) of Section 190 provides the cognizance upon the police report.

12. The apex Court in ***M/s Indian Oil Corporation Vs. M/s NEPC India Ltd. & Ors. 2006 AIR SCW 3830*** has observed as under:

“10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the

interest of lenders/ creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/ families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settled civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.

13. The Judicial Magistrate has already directed for investigation into the matter. However, it is desirable in the interest of justice that the Judicial Magistrate shall also direct the investigating agency to look into the matter by examining the relevant documents viz. registered agreement.

14. The applicants shall file the certified copy of the present order before the Judicial Magistrate, who shall also direct the investigation in this regard to the Police authorities. The applicants shall also file the complete documents before the Magistrate concerned, who shall pass suitable order in this regard for investigation under Section 156 93) of the Code of Criminal Procedure.

15. Subject to the aforesaid direction, I am not inclined to interfere at this stage under Section 482 of the Code of Criminal Procedure.

16. Consequently, application under Section 482 of the Code of Criminal Procedure is disposed of .

(Rajesh Tandon, J.)

16.12.2006

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